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EXTRAORDINARY

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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 22nd August 1953

S.R.O. 1645.—Whereas the election of Shri Keshava Prasad, as a member of the Legislative Assembly of the State of Vindhya Pradesh from the Mukundpur constituency of that Assembly, has been called in question by an Election Petition (No. 239 of 1952 before the Commission) duly presented under Part VI of the Representation of the People Act 1951 (XLIII of 1951), by Shri Vaman Gopal, son of Shri Ramadhin resident of Uparahti, Rewa;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VINDHYA PRADESH AT REWA

ELECTION PETITION No. 11/239

Shri Vamangopal, son of Shri Ramadhin, resident of Uparahti, Rewa—
Petitioner.

Versus

1. Shri Keshau Prasad (Congress candidate), resident of Badwar, Distt. Rewa, V.P.;
2. Shri Lal Jagannath Singh (Independent), resident of Hardi, Distt. Rewa, V.P.;
3. Shri Sidh Vinaiik Dwivedi (Socialist), resident of Municipal Town, Uparahti, Rewa;
4. Shri Janki Prasad (Ram Rajya Parishad), resident of Uparahti, Rewa;
5. Shri Jagmohan Lal Nigam (Kisan Sabha), resident of Dihia, Rewa;
6. Shri Bhagwan Datt Shastri (Independent), resident of Pandentola, Rewa, Vindhya Pradesh—*Respondents.*

CORAM:

Shri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*

Shri U. S. Prasad, B.A., LL.B.—*Member.*

Shri G. L. Srivastava, M.A., LL.B.—*Member.*

ORDER

At the last election the petitioner, as well as the six respondents No 1 to 6 contested a seat to the V P Legislative Assembly from Mukundpur Constituency. The petitioner was a candidate set up by K M P Party. Respondent No 1 who was a Congress candidate was declared elected as a result of the counting of votes.

2 The petitioner seeks a declaration to the effect that the election of respondent No 1 and the election as a whole in this constituency was void on the grounds set forth in para 6 of the petition.

3 We mention here some of these grounds in regard to which evidence has been adduced and argument advanced before us. It is contended that the ballot boxes used at the aforesaid election were defective and contrary to the mandatory provision of law inasmuch as they could be opened and the ballot papers contained therein could be extracted therefrom and introduced without breaking their seals, and because the ballot boxes had not been properly sealed, they were actually tampered with by removing ballot papers from the petitioner's boxes at the instance of and with the connivance of respondent No 1. According to the petitioner there was no adequate arrangement for the transport and safe custody of the ballot boxes after the poll till before the date of counting of votes. The Presiding Officer did not comply with the rules relating to despatch of material electoral rolls, unused, invalid and tendered ballot papers in separate sealed packets to the Returning Officer immediately after the poll as also in regard to the preparation and submission of returns in form No 10. The petitioner's further grievance is that his agents were not allowed to fix their seals on the packets and ballot boxes. It is also alleged that on 21st January 1953 the date fixed for counting of votes at Sohawal it was first given out by the Returning Officer that some of the ballot boxes of this constituency kept in polling station Ramnagar had to be fetched in a motor truck, so the actual counting commenced from 2 P.M. and during the interval of about 2 hours some men with sealing materials were seen going into and coming out of that store room. One of such men is said to be the Kanungo of Raghurajnagar tehsil. Some of the ballot boxes had lost their outer symbol and lac seals over many of them looked fresh. The outer symbol of a ballot box of Jhanna polling station was of Ram Rajya Parishad while the one kept inside it was that of hut. At the time of counting it was discovered that the ballot papers issued at a particular polling station on a particular date were found in the ballot boxes of a different polling station where polling was held later or earlier. Such ballot papers some 400 in number were at that time rejected as invalid by the Returning Officer. The latter did not then take into account the ballot papers cast at polling station Dha Bua and he prepared neither form No. 16, nor allowed the petitioner a copy thereof. He did not then verify the accounts previously prepared by the Presiding Officer under form No 10. The petitioner also avers that Government officials employed on election duty and also members of the Congress organisation canvassed for respondent No 1 and exercised undue influence and coercion upon the voters to secure his defeat. As set out in the petition the nomination papers of respondents 3, 4 and 6 were improperly accepted. Lastly it is averred that respondent No 1 secured majority of votes by illegal and corrupt practice. (It may be mentioned here that no particulars of the illegal and corrupt practices have been furnished by the petitioner.)

4 All the grounds set out in sub-paras (a) to (u) of para 6 of the petition have been categorically denied and controverted by respondent No 1. The latter further pleaded non-joinder of Shri Shambhu Nath and three others who were duly nominated candidates and also improper verification of the petition. According to the respondents all the rules relating to the conduct of election were duly observed and complied with by the Presiding Officers concerned and also by the Returning Officer at the time of counting. Respondent No 1 maintains that this election is void and that he has been duly elected.

5 The following issues were framed on the pleadings —

Issue No I(a) — Were the candidates who had been originally nominated but who withdrew their names under Section 37 of the R P Act 1951, necessary parties to the petition?

Issue No I(b) — If so what is the effect of their non-joinder?

Issue No II(a) — Has the petition been properly verified?

Issue No II(b) — If so what is the effect?

Issue No III(a)—Were the nomination papers of respondent Nos. 1, 3, 4 and 6 improperly accepted?

Issue No III(b).—If so, has the result of the election been materially affected thereby?

Issue No IV(a)—Were the ballot boxes used in this election defective and contrary to the mandatory provisions of law, inasmuch as they could be unlocked and ballot papers could be taken out without their seals being broken?

Issue No IV(b)—Were such ballot boxes tampered with and were ballot papers taken out from petitioner's ballot boxes and were such papers destroyed or transferred into the ballot box of respondent No 1 or into those of others?

Issue No IV(c)—Was this done with the connivance of respondent No. 1, his agents, workers and supporters?

Issue No IV(d).—If so, what is the effect?

Issue No V(a)—Have there been contraventions of the provisions of the R.P. Act and of the Rules made thereunder as alleged in para. 6, sub-paras (b), (c), (d), (f), (g), (i), (j), (k), (l) and (m) of the petition?

Issue No V(b)—Were such contraventions made in order that the ballot boxes could be tampered with?

Issue No V(c)—Were such ballot boxes tampered with by the connivance of respondent No. 1, his agents, workers and supporters?

Issue No V(d)—If so, what is the effect?

Issue No VI(a)—Were no adequate arrangements made for the safe transport and safe custody of ballot boxes and packets with the result that they were easily approachable by every one?

Issue No VI(b)—If so, were the ballot boxes tampered with by the connivance of respondent No 1, his agents and supporters?

Issue No VI(c)—If so, what is the effect?

Issue No VII(a)—Did members of the Congress Organisation, as well as those Government officials who took part in the conduct of election, actually canvass for respondent No 1, and exercised undue influence and coercion, with a view to secure the defeat of KMP Party?

Issue No VII(b)—Was this done with the connivance of respondent No. 1?

Issue No VII(c)—If so, what is the effect?

Issue No VIII—To what relief, if any, is petitioner entitled?

FINDINGS

6 *Issue No I*—This issue has been decided by us by our order dated the 26th November, 1952.

7 *Issue No II*—Similarly this issue has also been disposed of by us *vide* our order dated 15th January 1953

8 *Issue No III(a)*—On 13th January 1953 the petitioner filed an application stating that he would press this issue only so far as it related to the improper acceptance of the nomination paper of respondent No 3. He thus gave up his allegation on this score so far as respondent Nos 1, 4, and 6 are concerned. So we have now to confirm our finding only in regard to the improper acceptance of nomination paper of respondent No 3, Shri Sidh Vinaik, by the Returning Officer.

9. The petitioner (P.W. 7) does not say a word about it in his evidence before us. In the petition also the grounds on which the petitioner bases his allegations about improper acceptance of Shri Sidh Vinaik's nomination paper have not been disclosed. Shri Sidh Vinaik himself has been examined by the petitioner. He gives as P.W. 4. Towards the end of his examination in chief he says that he gets Rs 30 a month from the State for the Rag Bhog (expenses of worship) of Shri Ganesh Ji and that his father performs the 'Puja' on his behalf. He clarifies the point further in answer to a question put by a member of this Tribunal thus—“The amount of Rs 30 which is paid to me is not my pay or remuneration. This is the amount solely for the expenses of the worship”

There is absolutely no other evidence on this point and hence there is nothing before us to prove that respondent No 3, Shri Sidh Vinaik, used to get from the State this sum of Rs 30 per month as his remuneration for performing the 'Puja' of Shri Ganesh Ji. So the petitioner's allegation that Shri Sidh Vinaik held an office of profit at the time when he filed his nomination paper to fight the election

to V.P. Legislative Assembly seat as a Socialist Party candidate has not been substantiated rather it has been negatived by the above quoted testimony of Shri Sidh Vinaik, who is the solitary witness of the petitioner on this point. Hence we find that the nomination paper of respondent No. 3 was not improperly accepted.

10. *Issue No. III(b).*—In view of our above findings the second aspect of the issue regarding the material effect of the acceptance of Shri Sidh Vinaik's nomination paper by the Returning Officer on the result of this election, does not arise.

11. The issue, as a whole, is thus decided against the petitioner.

12. *Issue No. IV.*—It has been demonstrated before us by Shri Jai Singh (P.W. 13) that the ballot boxes of the type of Ex. P. 1 which were used at the last election could be opened without breaking the paper seals. P.W. 11 Shri Mushraff Husain had sealed a ballot box of the same design and so did Shri Hakim Singh (P.W. 12). The latter, however, pasted the paper seal loosely and put the lac seal over the thread at some distance from the knob through which the thread had been pasted and knotted. He admits to have since forgotten the rules relating to the sealing of ballot boxes. In order to open the ballot box Shri Jain Singh (P.W. 13) shifted the knots of the thread to a distance of about 1 inch from the knob. "With the help of a needle about $3\frac{1}{2}$ " long and a crochet needle measuring 6" in length he first pulled out the string which operates the bolt and thus turned the window cover exposing the paper seal. In doing so, he broke the lac seal over the thread but opened the ballot box without breaking or damaging the paper seal materially. On the basis of this very evidence in case No. 3/141 of 1952 we found that wherever "the P.O.'s while sealing the ballot boxes, used at different polling station..... had pasted the paper seal loosely and kept the thread bearing the lac seal long enough to reach the extremity of the upper lid, the said ballot boxes could be opened without breaking the paper seals, but this finding does not necessarily lead to the result that the type of ballot boxes used contained any intrinsic mechanical defect." In that case we have discussed at length the admissibility of such a demonstration of opening a ballot box by Jai Singh in evidence before us and given our reasons for the same. We need not repeat the same here.

13. The evidence adduced in this case on this point being the same as that in case No. 3/141 we come to the same conclusion and find that although there is no intrinsic mechanical defect in the design of the ballot boxes they can be opened and unlocked without breaking or causing appreciable damage to the paper seals if carelessly sealed by the P.Os. Further as in case No. 3/141 so in this case we find that in absence of any intrinsic mechanical defect the selection of this design of the ballot boxes by the Election Commission is not contrary to the mandatory provisions of Rule 21 of the R.P. (Conduct of Elections & Election Petition) Rules of 1951.

14. Parts (b) to (d) of this issue will be presently considered and dealt with while deciding part 3 or 4 of issue No. V & part 2 & 3 of Issue No. VI.

15. *Issue No. V (I).*—Contravention of the several rules of R.P. (Conduct of Election & Election Petition) Rules of 1951 has been pointed out in sub paras. (b) to (d), (f), (g) & (i) to (m) of para. 6 of the petition. Evidence however has been led on the matters set out below.

16. P.W. 7, the petitioner has stated that the ballot boxes had not been properly sealed and his agents were not allowed to put their seal over the packets made of unused and invalid ballot papers and of marked electoral rolls at several polling stations. P.W. 6 Indrabhan Singh was petitioner's polling agent at 5 Polling Stations. He has come forward to swear that he was not allowed by the Presiding Officer of those polling stations to affix his seal on the packets of unused or invalid ballot papers made by the Presiding Officer. No other polling agent of the petitioner who worked for him as such at other polling station has been examined on the point. As against the above statement of P.W. 6, Shri Bishal Singh (R.W. 4), who acted as Polling Officer of polling station Lakshmanpur Bhatlo, Dihia Brit and Dihia Narsinghpur swears that the big envelopes containing the marked electoral rolls, packets of unused and cancelled ballot papers were signed by the agents of different candidates. He denies to have refused permission to any of the polling agents to affix their respective seals on the packets made by him. R.W. 4 further swears to have sealed the ballot boxes properly and allowed the petitioner's polling agent and that of an independent candidate to affix their respective seals over them. Since the petitioner's evidence regarding the sealing of the ballot boxes and refusal of permission to his polling agents to affix their seals on the packets made by the Polling Officer are based in the information received by the petitioner from his polling agents and the statement of his solitary polling agent

(P.W. 6) stand uncorroborated and sufficiently rebutted by R.W. 4, we are not prepared to accept the petitioner's contention of this score. C.W. 1 Shri P. D. Chatterji I.A.S. also affirms to have found all the ballot boxes properly sealed when he took up the counting of their contents.

17. Next, it has been contended in para. 6(d) of the petition that the Polling Officers did not prepare or submit account of the ballot papers in form No. 10. P.W. 2 Shri Keshau Prasad, pleader, in his evidence says that the Returning Officer did not verify the result of his counting with the returns prepared by the Polling Officers under Rule 33 and said that some of the Polling Officers had not submitted the return. We find on record twenty such returns in Form No. 10. They are Ex. P.W. 1/2 to P.W. 1/21. In all there were 25 polling stations within Mukundpur Constituency. Evidently therefore no statement in form No. 10 as required by Rule 33 of the Representation of People (Conduct of Election and Election Petition) Rules, 1951 seem to have been prepared and submitted by the Presiding Officers of polling stations to the Returning Officer. This is sufficiently borne out by the note of the Returning Officer in his Return prepared under Rule 50 of the Representation of People (Conduct of Election & Election Petition) Rules, 1951. The note in question reads thus:—

“Form No. 10 examined. Details of account of ballot papers being incomplete, —verification could not be completed” vide form of Return of Election under Rule 10 in file (Ex. P.W. 1/23). So in view of this note of the Returning Officer and the fact that only 20 statements in form No. 10 (Ex. P.W. 1/2 to P.W. 1/21) out of 25 polling stations have been produced before us, we find that forms No. 10 of 5 polling stations are not available. Further we note that Ex. P.W. 1/2 to P.W. 1/21, which are form No. 10 of twenty polling stations, have not been correctly prepared. The figures noted in Col. No. 6 of these forms No. 10 (Ex. P.W. 1/2 to P.W. 1/21) regarding the total number of ballot papers to be found in all the ballot boxes of these twenty polling stations when added together work out to 7,251, whereas only 6,723 ballot papers were actually found in these ballot boxes of these 20 polling stations

18. As stated by P.W. 2 Shri Keshau Prasad, pleader, the Polling Officer did not permit him to take copy of the extract required under Rule 50, nor did he prepare such a return in form No. 10 in his presence. We have already referred to the return prepared by the Returning Officer under Rule 50 of the Representation of Peoples (Conduct of Elections and Election Petitions) Rules, 1951 contained in file No. Ex. P.W. 1/23. It is quite possible that the Returning Officer could not, in the rush of his duties, on the date of counting, grant P.W. 2 a copy of the said extract made by him, but we do not find any formal application for copy thereof made by the petitioner. Hence we do not find much substance in the petitioner's allegation about the Returning Officer's refusal to grant the petitioner's counting agent a copy of the extract of the result of his counting made under Rule 50 of the R.P. Act.

19. The petitioner's allegation to the effect that in ballot boxes of Jhinna, Dihia Birt, Dihia Narsinghpur, Bansa, Madwa A and Madwa B, ballot papers of other polling stations were found at the time of counting, is amply proved by the entries in Ex. R.W. 4/1, the figures noted in form No. 10, contained in Exts. P.W. 1/2 to P.W. 1/21 and the contents of the ballot boxes of three polling stations. As noted in R.W. 4/1 in file No. P.W. 2/6 of case No. 13/260, 800 ballot papers of serial No. 3,89,201 to 3,90,000 were issued for polling station Dihia Birt No. 19 where polling was held on the 17th January 1952 and 1,200 ballot papers of serial numbers 3,61,001 to 3,62,000 and 4,03,401 to 4,03,600 were issued for polling station No. 20—Dihia Narsinghpur. They were made over to the Presiding Officer of those polling stations who appear to have signed the entries acknowledging receipt thereof on 7th January 1952. It should be noted that at Dihia Narsinghpur polling station, polling was held on the 19th January 1952. On reference to the form No. 10 of Dihia Birt prepared and signed by the Returning Officer we find that the total number of ballot papers received by the Presiding Officer has been shown as 1,000, out of which 3 were cancelled, 684 returned and 313 were to be found in the box. The figures regarding the total No. of the ballot papers received by the Presiding Officer for Dihia Birt polling station No. 19, as given in form No. 10, is evidently wrong because only 800 authorised ballot papers had been made over to him for this polling station by the Returning Officer as entered in R.W. 4/1 and in the several check slips of polling station No. 19 prepared by the Returning Officer on the day of counting. Similarly 1,200 ballot papers had been entrusted to the Presiding Officer (R.W. 4) for use in Dihia Narsinghpur on 19th January 1952 in form No. 10 of Dihia Narsinghpur No. 20. He gives the total No. of ballot papers received as 1,000 only.

The learned advocate for respondent No. 1 has attempted to explain this apparent discrepancy by saying that the Presiding Officer of Dihia Birt No. 19 and Dihia Narsinghpur No. 20 being the same person, by mistake picked the bundle of 200 ballot papers which has been authorised for Dihia Narsinghpur and used the ballot papers of that bundle at Dihia Birt. This theory has been advanced by the learned advocate for respondent No. 1 in his argument only. It does not come from the mouth of R.W. 4 who acted as Presiding Officer of Dihia Birt and Dihia Narsinghpur. The witness has offered no explanation on this score. Hence the learned advocate for the petitioner has urged that 134 ballot papers which had been authorised for use at polling station Dihia Narsinghpur No. 20, on 19th January 1952 surreptitiously found their way into the ballot boxes of Dihia Birt (P.S. No. 19) where polling was held on 17th January 1952 i.e. two days earlier. These unauthorised ballot papers were first rejected by the Returning Officer as invalid but later he accepted them as valid. It may further be noted here that the Presiding Officer (R.W. 4) has not stated at the foot of form No. 10 relating to these two polling stations Dihia Birt and Dihia Narsinghpur, the serial number of authorised ballot papers which he had received for each of these two polling stations.

20. Similar discrepancy we noticed in regard to the serial number of ballot papers authorised for polling station No. 21, Bansa, where polling took place on 11th January 1952 and those authorised for polling station No. 22 Govindgarh where polling was held on 13th January 1952. 1,300 ballot papers of serial numbers 3,75,001 to 3,76,000 and those of 3,57,001 to 3,57,800 to be used at polling station No. 21 and 800 ballot papers of serial Nos. 3,57,301 to 3,57,800 and those of serial Nos. 4,04,901 to 4,05,000 to be used at polling station No. 22, Govindgarh, were entrusted to the Presiding Officer of these polling stations on 5th January 1952 (*vide* Ex. R.W.4/1) in file No. P.W. 2/6 of case No. 13/260 Form No. 10 of polling station Bansa discloses that out of 1300 ballot papers, 7 were cancelled, 999 returned and 294 were to be found in the ballot boxes. S. Nos. of the ballot papers for use at polling station Bansa (21) are not set forth in form No. 10. The column is left blank. Then, as noted in form No. 10 of polling station No. 22, Govindgarh, out of 800 ballot papers, 602 were returned, 3 cancelled and 195 to be found in the ballot boxes. At the foot, serial numbers of the ballot papers authorised for use at Govindgarh are given as A/1 357,801 A/1. These figures do not tally with those of ballot papers really entrusted to the Polling Officer under the latter's receipt and signature contained in Ex. R.W. 4/1 of file No. P.W. 2/6 of case No. 13/260. It follows that fictitious or imaginary figures regarding the serial numbers of the ballot papers authorised for polling station No. 22, Govindgarh, are stated in form No. 10 of the station. Next, we note that 78 out of the bundle of 700 ballot papers bearing serial numbers 3,75,001 to 3,76,000 were found in the ballot boxes of polling station Bansa (21) where polling had taken place on the 11th instant. These 78 ballot papers were first declared invalid by the Returning Officer but later accepted as valid and counted. The officer who acted on these two polling stations has not been examined. In regard to these 78 ballot papers the learned advocate for respondent could not advance his theory of picking up of wrong bundle of Govindgarh ballot papers and using the same at Bansa because these 78 ballot papers are included in the larger bundle of 700 ballot papers from which good many ballot papers were issued at Govindgarh.

21. For polling station No. 24 where polling took place on 17th January 1952 900 ballot papers of S. Nos. 3,67,901 to 3,68,000 and of S. Nos. 3,84,001 to 3,84,800 were authorised and entrusted to the Polling Officer. The same number of ballot papers e.g. 900 of S. Nos. 3,84,801 to 3,85,000 and those of 3,93,001 to 3,95,700 were authorised and made over to the same Polling Officer for use at P.S. Marwa B (No. 25) on 19th January 1952. 40 ballot papers issued for Marwa A were found in the ballot boxes of Marwa B. In form No. 10 of these polling stations Marwa A & B (Nos. 24 & 25) the aforesaid serial numbers of ballot papers issued for each of these polling stations have been stated correctly.

22. P.Ws. 2, 4, 7 and 10 have deposed to the recovery of unauthorised ballot papers from the ballot boxes of polling station Dihia Birt, Bansa and Marwa B, and their statements on this score not only stand uncorroborated, but are also proved to the hilt inasmuch as 134 such ballot papers of Dihia Narsinghpur were found in ballot boxes of Dihia Birt, 78 of Govindgarh in the ballot boxes of Bansa, and 40 of Marwa A in the ballot boxes of Marwa B, and the same number (40) authorised for Marwa B in the ballot boxes of polling station Marwa A. All such ballot papers (134+78+40)—252 in number should have been rejected by the Returning Officer under Rule 47(c) of the R. P. Rules, 51, as had been done by him in the first instance. The Returning Officer was not justified in declaring them valid subsequently in contravention of the said rule. In the first instance the Presiding Officers had been grossly negligent in issuing

ballot papers meant for use or authorised for a particular polling station at another polling station Rule 19(4) of the RP Rules 51, directs the Returning Officers to entrust to the Presiding Officer sufficient number of ballot papers for each polling station to be used at that polling station. The Presiding Officer of Dihia Birt, Narsinghpur, Bansa Govindgarh, Marwa A and B obviously contravened this Rule No 19(4).

23 There may be some reasons for the presence of ballot papers issued on 17th January 1952 at Marwa A in the ballot boxes of polling station Marwa B where polling was held at a later date viz 19th January 1952. It is possible that some voters surreptitiously removed the ballot papers issued to them at Marwa A and made them over to some voter of polling station of Marwa B who stealthily put these ballot papers in the ballot boxes of polling station Marwa B. However, from the mere fact that ballot papers issued on a subsequent date were found in the boxes placed at polling stations where polls had been held earlier we cannot necessarily conclude that they were introduced into those ballot boxes after the polls while they were lying in some store room under police guard or being transported to some police station for custody. Since such ballot papers were found in the ballot boxes of several candidates and not in those of one particular candidate, this appears to be more due to the mistake on the part of the Presiding Officers of these polling stations than on the part of the voters. Had they been in the ballot boxes of one particular candidate, the inference of their subsequent introduction *mala fide* would have been irresistible. At any rate Rules 19(4) and 47(c) of RP Rules, 51, have been flagrantly disregarded and contravened.

24 There is absolutely no evidence to support the petitioner's allegation about the damage of the paper seal pasted to the ballot box of polling station Talbi. But the fact that the outer symbol of the petitioner is box used at polling station Jhinna was that of 'Ram Rajya Parishad' whereas the symbol placed inside the ballot box was that of 'hut', is admitted by PW 1 Mr Zutshi, District Magistrate of Satna and also by the Returning Officer, Mr Chatterji, CW 1. The box bearing such different symbol is PW 1. We also notice the difference in the outer and inner symbols of this box. A written objection to this effect was taken by the petitioner's counting agent at the time of counting. That written objection is PW 1/30B. Of course the ballot papers contained in this box were counted as those cast for the petitioner. Still it has been reasonably contended that the petitioner's voters were misled by the outer symbol of 'Ram Rajya Parishad'. In this view of the matter this irregularity in regard to the difference of the outer symbol with the inner one assumes rather a serious aspect.

25 In regard to the petitioner's allegation that the ballot boxes were not arranged candidatewise at the time of counting, we have the evidence of PW 4 Shri Sidh Vinak who says that ballot papers were counted according as the boxes arrived at random. PW 5 also says that the ballot boxes were not in order, nor were they arranged separately. As against this, the Returning Officer Shri P D Chatterji, IAS definitely swears that the ballot boxes had been arranged separately candidatewise before the counting started. The two written objections (Ex PW1/30A and PW1/30B) did not contain an allegation about the disorderly way in which the ballot boxes were brought and counted. So the petitioner's objection on this score appears to be a belated one and we do not feel inclined to accept the statement of PWs 4 and 5 on this point. Similarly the petitioner's contention that the candidates and their agents were not allowed to examine the end of the paper seal inside the ballot box at the time of counting is negated by the following statement of PW 5, Dr Janki Prasad who was contesting candidate at the said election. "We were asked to examine the ballot box and I as well as other candidates examined our respective ballot boxes. Seals of some of the boxes looked fresh and we brought it to the notice of the Returning Officer. The latter asked us not to mind the time as paper seal inside them was more important". So both these contentions of the petitioner fail.

26 There is yet another important allegation of petitioner which needs our careful consideration. PWs 2, 4, 5, 7, 8 and 10 have deposed in support of the petitioner's allegation to the effect that the Returning Officer arrived late at Sohawal on 21st January 1952 at about 12 noon for the purpose of counting the ballot papers. On being approached by the petitioner and others to begin the counting, he gave out that some of the ballot boxes had been lying at police station Ramnagar and a truck had been sent to fetch them from that place. According to the petitioner and his witnesses, Ramnagar is outside the area of Mukundpur constituency and it does not lie on the way to Satna. The petitioner, his agents and other candidates were thus kept waiting till 2 pm when the

Returning Officer disclosed to them that such boxes were found in a room at police station Sohawal where other boxes had been stored. P.Ws. 2, 4, 5, 7 and 10 further asserts to have seen some men going into that room with sealing materials. Shri Ganesh Prasad, P.W. 10, swears to have seen Shri Sher Singh, Tehsildar and Shri Jalaluddin, Kanungo entering the store room and some minutes later a Chaprasi was seen to have been carrying seal and sealing wax to the Kotwali. Shri Ganesh Prasad was the counting agent of Ram Rajya Parishad. He communicated this information to P.W. 2 and others. P.W. 2 also swears to have seen a man carrying a gum pot towards the room. Later, when boxes were brought out for the purpose of counting their ballot papers, P.W. 2 observed fresh lac seals over some of the boxes and he alleges to have brought it to the notice of the Returning Officer to which the latter replied that the freshness of lac seal was immaterial when the paper seals were intact. P.W. 2 avers to have demonstrated to the Returning Officer that the ballot boxes could be opened without breaking the paper seals if the lac seals were removed. P.W. 4 Shri Sidh Vinal, a defeated candidate also affirms to have seen the Kanungo and some clerks going inside the Thana room with thread etc. P.W. 5 Shri Janki Prasad avers to have noticed some officers going inside the room where the ballot boxes lay and some of them carried sealing materials and so the witness suspecting some foul play, filed the written objection (PW1/30A) along with other candidates. The petitioner (P.W. 7) also swear to have seen the Kanungo going into the room with a gum pot. R.W. 1 Shri Keshau Prasad who is the contesting respondent in this case also has made a clear denial of the petitioner's allegation in this behalf saying that he did not see any one carrying sealing material to the place where ballot boxes had been kept. He admits, however, that written complaint was filed by the petitioner to the Returning Officer and that he pretends to be ignorant of its contents. Similarly R.W. 2 the Counting Agent of respdt. No. 1 denies to have seen any one entering the room in which the ballot boxes had been stored with sealing materials.

27. The sworn testimony of the Returning Officer, Shri P. D. Chatterji, I.A.S. (C.W.1) on this score, however, is that when he arrived at Sohawal that day for the purpose of counting, he was first informed by a police officer that motor truck had been sent to fetch some ballot boxes from Ramnagar, but later, when he sent a special messenger to the police Superintendent at Satna, the latter came to Sohawal and found all the ballot boxes of this constituency in Sohawal Thana. Thereupon the counting commenced. C.W. 1 clearly refutes the petitioner's allegation about the entrance of several persons with sealing materials in the room where the ballot boxes had been stored under lock and key. C. W. 1 however affirms to have sent some of his clerks to re-seal packets which he had opened and which were lying in another room. Since the room in which the ballot boxes had been stored adjoined or lay in close proximity of the room in which the sealed packets had been kept and because some clerks were sent by C.W. 1 to re-seal the packet which C.W. 1 had opened in one of the two rooms, P.Ws. 2, 4, 5, 7 and 10 got an impression that those clerks had gone to the other room with a view to tamper with the ballot boxes and hence their complaint or objections embodied in Ex. P.W. 1/30A. It is really difficult to believe that the clerks or whosoever they might be would be so daring as to attempt the tampering of the ballot boxes in broad day light in presence of the candidates or their counting agents. For such a purpose another time and occasion would have been more suitable. It is preposterous to suppose that a nefarious act of this kind would be perpetrated under the very nose of those who were bound to repose it. Shri Chatterji (C.W. 1) has further explained the reasons why the lac seals of some of the ballot boxes looked fresh. As stated by him the ballot boxes were carried in trucks and piled one upon the other. Those above or at the top were exposed to dust while those on the lower rows were not so. Hence the lac seals of the boxes placed in the lower rows naturally looked fresh in comparison to those over the boxes at the top. So we do not see any great force or substance in the petitioner's allegations contained in para. 6(f) of his petition. In view of Mr. Chatterji's testimony - 1 reasonable explanation offered by him, we find that the petitioner's allegation on this score are based on mis-apprehension and mis-conception of facts, and so we do not accept the same.

28. The petitioner as P.W. 7 in his evidence before us states that the ballot boxes of Dihia Birt were not opened nor were the ballot papers thereof counted. He further says that, consequently, the result of counting of these ballot papers was never announced. The testimony of the petitioner's counting agent Shri Keshai Prasad (P.W. 2), on the other hand, on this point reads as follows:—

"At the time of counting it was found that the ballot boxes of Jhinna, Dihia, Narshingpur, Basa, Marwa A and Marwa B contained some ballot papers relating to other polling stations. Such ballot papers were 4 to 5 hundred in

number. The Returning Officer prepared packets of such ballot papers in our presence and on the packet he wrote 'rejected' and in the chits prepared at the time such ballot papers in our presence and on the packet he wrote 'rejected' and on the chits prepared at the time of counting he made entries to the same effect. At the time of counting a large number of such discrepancies were found in the case of Dihia Birt, so the result was not announced". Evidently therefore P.W. 7 is contradicted by his own counting agent (P.W. 2) when he says that the ballot boxes of Dihia Birt were not opened nor were the ballot papers thereof counted. As against both these witnesses (P.W. 2 & P.W. 7) Shri P. D. Chatterji, I.A.S. (C.W. 1) has stated that in the first instance he declared all the unauthorised ballot papers found by him in the ballot boxes of almost all candidates invalid and put such a note over their packets. But, on re-consideration, the same day, before the result was published, he adds that he accepted them as valid and the same was noted. Copies of the express telegram despatched by the Returning Officer and his declaration of the result of election in form No. IV dated the 23rd January, 52 with his covering letter to the Secretary, Election Commission are in the file, Ex. P.W. 1/23. We are not prepared to believe that the Returning Officer would not announce the result of the election soon after he had finished the counting of ballot papers. The candidates and their agents present at the counting would not allow him to do so. The petitioner's allegation on this score is, therefore, not accepted.

29. The petitioner's counting agent Shri Keshau Prasad (P.W. 2) swears that when he and the petitioner inspected the record (Ex. P.W. 1/23) for the purpose of obtaining certified copies of form No. 14 some time after presenting this petition, they found that there was no entry in Col. No. 4 of the said Return against polling station Dihia Birt relating to all the candidates. Shortly after that he found that these blank entries had been filled in by some clerk. He brought this to the notice of the Deputy Commissioner of Satna—Shri Zutshi—who ordered the clerk to strike off those entries and initial them. The statement of P.W. 2 on this point has been fully supported by P.W. 1 Shri Zutshi, the present Dy. Commissioner of Satna who says "The Returning Officer had noted the total number of votes counted by him in form No. 14 against some of the polling stations and in regard to some polling station the number of total votes counted by him was not entered. The clerk subsequently filled those blank spaces". The certified copies of such form No. 14 (Ex. P.W. 2/1 to P.W. 2/5) also bear out the above evidence of P.W. 2. They clearly show the scoring out of the entries which had been subsequently made by the clerk.

30. We, therefore, find that Returns in form No. 10 in respect of polling stations Nos. 1 to 5 are not traceable, those prepared (Ex. P.W. 1/2 to P.W. 1/21) are not wholly correct, because the total number of ballot papers to be found in the ballot boxes as entered in these Returns do not tally with the total number of ballot papers actually counted by the Returning Officer. We, further, find that about 292 unauthorised ballot papers were found in the ballot boxes of polling station Dihia Birt, Bansia, Marwa A and Marwa B, and that those 292 ballot papers first declared invalid were subsequently accepted as valid and counted obviously in contravention of Rule 47, clause 1(c). The Returning Officer could not comply with Rule 49 of R. P. Rules, 51, because form No. 10 of polling station Nos. 1 to 5 were not available, that some of the entries in form No. 15 contained in file No. P.W. 1/23 had been left blank which the clerk subsequently attempted to fill in long after the filing of this petition. It is proved that the outer symbol of the ballot box of the petitioner at polling station Jhinna (Ex. P1) bearing the symbol of 'Ram Rajya Parishad' differed from its inner symbol of 'hut' though the ballot papers thereof were counted as petitioner's. The other allegations of the petitioner embodied in para. 6 of his petition have not been substantiated by sufficient and reliable evidence. The issue is, therefore, decided partly in petitioner's favour and partly against him as adverted to above.

31. *Issues No. V(A) & (B).*—R. P. Rules of 1951 were evidently framed and enacted with a view to check and guard against the manipulation of ballot papers and tampering with the ballot boxes after the polling. This object of the rules is manifest. So breach or contravention of the rules relating to the conduct of election as embodied in R. P. Rules 1951 may afford facilities for making illegal and wrongful use of the ballot boxes after the poll. There is, however, no positive evidence to prove nor sufficient materials before us to hold that some or particular number of ballot papers not issued at a polling station were subsequently introduced into the ballot boxes of a particular or the winning candidate or that the ballot papers were removed from the ballot boxes of the petitioner or those of any other defeated candidate while they were being transported to or stored in the police station.

32. We are asked to infer such a tampering from the following facts and circumstances which have been brought on the record of this case:—

- (1) The ballot boxes would be opened without damaging their paper seals.
- (2) The presence of unauthorised ballot papers in the ballot boxes of 4 polling stations.
- (3) The delay of about 2 hours in the counting of ballot papers on the ground of some incorrect information or a false pretext.
- (4) Some men were seen entering the room in the Thana building with sealing materials and some lac seals looked fresh.
- (5) The non-preparation of form No. 10 in respect of 5 polling stations and incorrectness of the entries in form No. 10 of other polling stations.

33. As we have noted above the mere fact that the ballot boxes could be opened without breaking their paper seals cannot lead us to an inference that the contents thereof were necessarily tampered with. So we have to look for some other evidence of the actual tampering.

34. We have already noted above that the presence of unauthorised ballot papers in the wrong ballot boxes appears to be more due to the mistake and misconception of the Rule No. 19(4) of the Representation of the Peoples (Conduct of Elections & Election Petition) Rules, 1951 than mischief. This is evident from the fact that these authorised ballot papers were not recovered from the ballot boxes of a particular candidate. The irregularity of this type occurred in ballot boxes placed at 5 polling stations of group Nos. 4 and 5. The same person acted as Presiding Officer at polling stations Dihia Birt and Dihia Narsinghpur, while another Presiding Officer worked at the remaining 3 polling stations. The ballot papers to be used at each of these 5 polling stations were entrusted to each of the two Presiding Officers by the Returning Officer on the 5th and 7th January, 1952. As stated by Shri P. D. Chatterji (C.W. 1) "balance of ballot papers not used after the polling at a particular polling station was over were used at another polling station, they wanted to make use of the ballot papers economically". He stated that he had given verbal instructions to the Presiding Officers regarding the use of ballot papers at different polling stations. Even now Shri Chatterji thinks that the total number of ballot papers entrusted to a common Presiding Officer of a particular group of polling stations could be used at another polling station within that group. When an officer of the rank of Shri Chatterji is not very particular about the observance of Rule 19(4), the Presiding Officers of the type of Ram Bishal Singh, a teacher of a Hindi Middle School, is not expected to be fully conversant with the said Rules. So presence of such unauthorised ballot papers in the ballot boxes of these 5 polling stations was more due to the carelessness of the Presiding Officer and their ignorance of the rules on the point than to a *mala fide* motive on their part to help a particular candidate with a number of ballot papers to be subsequently introduced into his ballot boxes. It is significant to note the number of unauthorised ballot papers in the ballot boxes of the candidates concerned such as could be gathered from the slips in which the Returning Officer first noted the number of ballot papers counted in respect of each candidate:—

1. Shri Keshau Prasad	60
2. Shri Nigam Jagmohan Lal	3
3. Shri Vamangopal	69
4. Shri Bhagwan Datt Shastri	12
5. Shri Sidh Vinalk	69
6. Shri Janki Prasad	6

This speaks for itself and demolishes the theory of tampering with the ballot boxes with a view to adding to the votes of the respondent No. 1.

35. The delay in the commencement of the counting and entry of some clerks in the room of the Thana building where the ballot boxes had been stored have been explained by Shri Chatterji who acted as Returning Officer and did the counting. He commenced the counting late because he was misinformed by some one who may be some police Sub-Inspector that some of the ballot boxes were to be brought from Ramnagar. It has been suggested to us by the learned advocate for the petitioner that this false information was given to Shri Chatterji by some interested person in order to gain time for tampering by breaking the

original lac seals of some of the boxes and putting fresh seals instead. This suggestion has been amply replied by the sworn testimony of Shri P. D. Chatterji who definitely asserts that the clerk whom he sent to re-seal some packets which had been opened by him did not actually enter the room in which the ballot boxes had been stored. We have already given reasons for rejecting this allegation of the petitioner.

36. Undoubtedly the form No. 10 of polling stations Nos. 1 to 5 of party No. 1 were not before the Returning Officer when he did the counting of votes on 23rd January 1952 and so he could not make the verification required by Rule 49 of Representation of Peoples (Conduct of Elections & Election Petitions) Rules, 51. It does not necessarily mean that the Presiding Officer of these 5 polling stations namely Mukundpur and Bela did not prepare any accounts in form No. 10 at all as enjoined by Rule 33. It is possible they might have been misplaced or lost some where. So from the mere fact that form No. 10 of these 5 polling stations are not traceable, we cannot find it as a fact that the ballot boxes were actually tampered with. We have compared the number of votes polled at Bela polling station No. 5 according to form No. 14 with the number of ballot papers issued to voters as gathered from the marked Electoral roll which we opened for testing the correctness of this form. The two tallied completely.

37. We have now to consider the effect of the contravention of or non-compliance with Rule Nos. 19(4), 47(1)(c) and 49 of the Representation of Peoples (Conduct of Elections & Election Petitions) Rules, 51 under rule 47(1)(c) unauthorised ballot papers found in the ballot boxes in contravention of rule 19(4) have to be declared invalid. The total number of such ballot papers is 292. So we have to exclude these unauthorised ballot papers from the total number of votes polled by the candidates in whose ballot boxes such ballot papers were found. Deducting such ballot papers—60 in number—from the total votes polled by respdt. No. 1, the total balance of votes polled by him would be 2,899. Shri Janki Prasad Respdt. No. 4, polled the next highest votes, namely, 1,689. So the difference is of more than 1,200 votes. Hence the contravention of Rule 19(4), 47(1)(c) did not materially effect the result of this election.

38. The incorrect entries in the form No. 10 (Ex. P.W. 1/2 to P.W. 1/21) appear to be of the nature of clerical error. We have checked the total number of votes found in the ballot boxes of Dehia Narsinghpur polling stations No. 20, with the marked electoral roll. The total number of ballot papers issued at that polling station according to the marked electoral roll is the same as found in the ballot boxes of the 7 candidates at that particular station. So the incorrect entries in these form No. 10 are due to the carelessness or inefficiency of the officers who presided at these polling stations and prepared these accounts. Lastly the omission in making entries in col. No. 4 of form No. 14 against polling station Dehia Birt loses much of its importance because the total of valid votes recorded at the foot of these forms No. 14 do not seem to have been tampered with except in the case of Keshau Prasad's. The original figure 2,899 has been scored through and 2,959 has been put in its place. This is so because of the subsequent validation of the unauthorised ballot papers found in his ballot boxes. In Form No. 16, which was prepared immediately after the counting the total number of votes for each candidate have been correctly noted in col. No. 2 against each of the 7 candidates and there seems to be no tampering with the figures.

39. With regard to the difference in the outer and inner symbols of the ballot box Ex. P1 at polling station Jhinna, even if the total votes (342) polled at that polling station by all the candidates be not taken into account, and ignored altogether, respdt. No. 1 would poll the highest votes and the difference of votes between him and next candidate would be of more than 500. Even supposing that all these votes would have gone to the petitioner, the result of the election is not materially affected.

40. There is no doubt that there has been contravention of the rules relating to the conduct of elections owing to the inexperience or inefficiency of some presiding officers as noted above. We have failed to find mala fides or any ulterior motive on their part. Under Sec. 100(2)(c) of the R.P. Act, 51, we can declare an election to be void on the ground of non-compliance of the provisions of the R. P. Act and Rules made there under only if such non-compliance or contraventions thereof materially affect the result of the election. As indicated above in the present case the result of this election has not been materially affected by contravention of the said rules.

41. *Issue No. VI(a) to VI (3).*—There is not an iota of evidence before us to indicate lack of proper arrangement for the transport of the ballot boxes from different polling stations of this constituency to the police station where they were stored till the date and time of counting of votes e.g. the 23rd January, 1952.

In regard to the safe custody of those ballot boxes Shri P. D. Chatterji (CW 1) says that all of them had been kept in one of the rooms at police station Sohawal under police guard as well as under lock and key. He further asserts that he had made adequate arrangements for the transport and safe custody of those boxes with the Superintendent of Police. We have already considered the implications of these pleas in the light of the proved facts. We are of the opinion that the ballot boxes were not tampered with and consequently this issue is decided against the petitioner.

42. *Issue No. VII(A) to VII(C).*—The evidence adduced on behalf of the petitioner on these issues consists of the oral testimony of P.Ws. 5 to 7. P.W. 6 acted as the petitioner's polling agent at 5 polling stations. In his examination-in-chief P.W. 6 stated that at polling station Bhanthlo I objected to the Presiding Officer to the canvassing of a voter by a Polling Officer in favour of a Congress candidate, the latter prompted the voter to cast his vote in the ballot box bearing the symbol of bullocks. But when questioned by the respdt. No. 6's lawyer in cross examination, P.W. 6 could not name the Polling Officer who canvassed the voters. Lachhman Singh in his presence. Admittedly he filed no written objection to the effect. The above quoted statement of P.W. 6 stands wholly uncorroborated and as such unworthy of credence. The following statements of the petition (P.W. 7) at page 3 of his deposition are relevant for the purposes of this issue:—

"The Chief Commissioner Mr. Pillai had come to Sohawal during the counting. On our objection regarding the ballot papers issued on the 11th and found in the ballot boxes kept at polling station in which polling took place on the 13th, the Chief Commissioner dissuaded us from raising objections on the score. He had some talk with Sidh Vinaik".

P.W. 5 Dr. Janki Prasad merely asserts to have seen Mr. Pillai talking to Shri Sidh Vinaik. The latter who figures as P.W. 4 is altogether silent on this point. It is however evident from the objection petition (P.W. 1/30A) that Shri Sidh Vinaik had first joined, but later withdrew from it. C.W. 1 Shri P. D. Chatterji, I.A.S., do doubt speaks of Mr. Pillai's visit at Sohawal, but he strongly refutes the suggestion that Mr. Pillai instructed him to accept or reject any one's objection. We cannot on the basis of the solitary evidence of the petition (P.W. 7) hold that Mr. Pillai, the then Chief Commissioner of Vindhya Pradesh exercised any undue influence on Shri Sidh Vinaik or the Returning Officer in the matter of the petitioner's objection contained in Ex. P.W. 1/30-A.

43. There is no other evidence on the record of this case to show that Government officials or members of the Congress Organisation canvassed for respdt. No 1 or exercised undue influence or coercion with a view to defeat the petitioner who stood as a candidate of the K.M.P.P. at the last election Issue No. VII(A) therefore is found in the negative. The questions involved in issue No. VII(B) and VII(C) do not arise. The issue as a whole is decided against the petitioner.

44. The result is that the petition is dismissed. In view of the breach of several rules on the part of some officers conducting this election, this election petition had to be filed. Though the result of the election has not been materially affected by the contravention of the rules and the petition has to be dismissed, we order that in the circumstances of this case, the parties shall bear their own costs.

45. Shri N. N. Mukarji, Shri B. C. De and Shri Manmohan Nath Advocates for the petitioner, while Shri A. P. Pande, Shri Santosh Kumar Srivastava and Shri S. D. Pande Advocates and Shri Harish Kumar Srivastava and Shri G. J. Misra Pleaders for the respondent.

Announced.

(Sd.) E. A. N. MUKARJI, *Chairman.*

(Sd.) G. L. SRIVASTAVA, *Member.*

(Sd.) U. S. PRASAD, *Member.*

The 25th July 1953.

[No. 19/239/52-Elec.III/1075.]

S.R.O. 1646.—Whereas the election of Shri Ram Sajiwan, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Sabhapur constituency of that Assembly, has been called in question by an Election Petition (No. 260 of 1952 before the Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Hridaya, S/o Shri Saryu Prasad, R/O Deora, District Satna, Vindhya Pradesh;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VINDHYA PRADESH AT REWA

ELECTION PETITION No. 13/260 OF 1952

Shri Ram Hriday, son of Shri Sarju Prasad, Resident of Deora, Distt. Satna, Vindhya Pradesh—*Petitioner.*

Versus

1. Shri Ram Sajiwan, son of Shri Narbada Prasad, resident of Jaso, Tehsil Nagod, P.O. Jaso, Distt. Satna (Congress candidate);
2. Shri Sitaram Nepali, son of Damodar Saran, resident of ward No. II, Ghoghar, Rewa (Socialist);
3. Shri Risal Singh, son of Anrudh Pratap Singh, resident of Pagar, P.O. Birsinghpur, Distt. Satna (Jan Sangh);
4. Shri Ram Kumar Tripathi, son of Bidhata Prasad Tripathi, resident of Lakhanpur, P.O. Chitrakut, Distt. Satna (Ram Rajya Parishad)—*Respondents.*

CORAM:

Shri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*

Shri Umashankar Prasad, B.A., LL.B.—*Member.*

Shri G. L. Srivastava, M.A., LL.B.—*Member.*

ORDER

This is a petition under section 81 of the Representation of Peoples Act, 1951 with regard to the election of Shri Ram Sajiwan, Congress candidate, to the Legislative Assembly, Vindhya Pradesh, from the Sabhapur Constituency. The petitioner, Shri Ram Hriday, is an elector in this constituency, which is a single member constituency. He was allotted the K.M.P.P. symbol 'hut', and stood as a candidate for election. All other respondents were also candidates at the same election. Shri Sitaram Nepali, respondent No. 2 stood as a Socialist candidate, Shri Risal Singh, respondent No. 3 as a Jan Sangh candidate and Shri Ramkumar Tripathi, respondent No. 4 as a Ram Rajya Parishad candidate.

2. The polling took place in this constituency on the 11th, 13th, 15th, 17th and 19th January, 1952. Counting of the votes took place at Sohawal on 30th January, 1952 when Shri Ram Sajiwan was declared as the successful candidate, having secured 3,106 valid votes, the petitioner got 830 valid votes.

3. The election of Shri Ram Sajiwan is challenged as being void and liable to be declared as such, on various grounds given in para. 6 of the petition. These grounds briefly stated are as follows:—

(a) The ballot boxes used in the election were defective and contrary to the mandatory provision of law, as they could be opened without breaking their seals.

(b) The sealing of the ballot boxes was not done in accordance with Rule 21, clause 5 of the Representation of the Peoples (Conduct of Elections and Election Petitions) Rules, 1951.

(c) The Presiding Officers in all the polling stations refused to make into separate packets and seal all the papers mentioned in Rule 32 of the said rules, in presence of the petitioner or his agent, and thereby deprived the petitioner from exercising his statutory right of affixing his seal.

(d) No accounts of ballot papers in form No. 10, as provided by Rule 33, were prepared by the Presiding Officers, immediately after the close of the polls.

(e) The Returning Officer did not verify the accounts as he was required to do under Rule 49.

(f) The Returning Officer did not allow the petitioner or his agent to take a copy or extract from the Returns under Rule 50.

(g) No adequate arrangements were made for the safe transport or safe custody of ballot boxes after the polling, and they were kept in places which were easily approachable by various people.

(h) These contraventions of law were made in order that ballot papers may be manipulated to the advantage of respondent No. 1.

(i) The ballot boxes were tampered with and ballot papers from the petitioner's boxes were taken out and put into the boxes of respondent No. 1, also unused ballot papers were introduced into the ballot boxes of respondent No. 1.

(j) At Pathar Kachhar polling station one box of respondent No. 1 was found, at the close of the polling, to be open. The Presiding Officer transferred its contents to another box. When this matter was brought to the notice of the Returning Officer, he refused to order re-poll. This he did under the influence of Shri Gopal Saran Singh, who was a Congress candidate and was then present. He was President of the District Congress Committee.

(k) About half the number of ballot boxes had their outer symbols missing, so they could not be sorted out under Rule 46.

(l) Before counting, the ballot boxes were not arranged separately candidate-wise.

(m) The counting of the ballot papers of all the candidates was done simultaneously.

(n) At the time of counting it was found that two ballot boxes which had no outer symbols bore the number of respondent No. 1 on the paper seal, but the inner symbol was of Ram Rajya Parishad. Similarly in two other boxes the paper seals indicated the number of Ram Rajya Parishad, but when opened, Congress symbols were found inside.

(o) All the officials of the V.P. Government were bitterly opposed to the K.M.P. Party and actively participated in canvassing for respondent No. 1 and committed other mal-practices, namely, undue influence, coercion etc. This was done with the active connivance of Congress leaders and of respondent No. 1.

(p) The result of the election has been materially affected by the improper acceptance of the nomination papers of respondent Nos. 1 and 2.

(q) The election of respondent No. 1 has been procured by illegal and corrupt practices.

(r) The result of the election has been materially affected by the improper reception of votes and by non-compliance with the provisions of the Constitution, the R.P. Act, 1951, and Rules and Orders made thereunder.

4. The prayer in the petition is that the election of respondent No. 1 and the election as a whole be declared void.

5. In the list of particulars attached to the petition, several corrupt practices have been mentioned in detail. These also have been made the subject matter of certain issues, as will be referred to later.

6. In the written statement filed by the only contesting respondent No. 1, he has categorically denied the correctness of the allegations made in the petition. He has also pleaded that the non-joinder of Shri Shankar Prasad is fatal to this petition.

7. Statements of both the parties were recorded by this Tribunal under Order 10, Rule 2, Civil Procedure Code. In the oral statement given by the respondent No. 1 it was pleaded that his name was entered in the electoral roll of Jaso, in Nagod constituency. This was with regard to the petitioner's plea of improper acceptance of his nomination paper. In reply to this point the petitioner did not

deny the fact but merely stated "I do not know". He also stated that respondent No. 1 did not produce any certified copy of the relevant entry in the electoral roll before the Returning Officer. Arising out of the written and verbal pleas of both the parties, the following issues were framed:—

ISSUES

Issue No. I(A).—Was the name of respondent No. 1 entered in the electoral roll of Nagod Constituency and hence was he entitled to stand for this election from Sabhapur Constituency?

Issue No. I(B).—Has the result of the election been materially affected by the acceptance of his nomination paper?

Issue No. II(A).—Were the ballot boxes used in this election defective and contrary to the mandatory provisions of law and could they be unlocked and ballot papers taken out therefrom and put in therein without their seals being broken?

Issue No. II(B).—Were the ballot boxes not properly sealed in accordance with clause 5 of Rule 21 *ibid*?

Issue No. II(C).—If so, what is the effect?

Issue No. III(A).—Did the Presiding Officer in all the polling stations of this constituency refuse to make into separate packets and seal the papers and documents mentioned in Rule 32 of the Representation of the Peoples (Conduct of Elections and Election Petitions) Rules, 1951, in the presence of the petitioner or his agent?

Issue No. III(B).—If so, what is the effect?

Issue No. IV(A).—Were packets not accompanied by an account of ballot papers in form No. 10, as provided in Rule 33 *ibid*?

Issue No. IV(B).—If so, what is the effect?

Issue No. V(A).—Did the Returning Officer not verify accounts submitted by Presiding Officers under Rule 33 by comparing them with the statements prepared under Rule 46, as provided in Rule 49?

Issue No. V(B).—If so, what is the effect?

Issue No. VI(A).—Did the Returning Officer not permit the petitioner or his counting agent to take a copy of or extract from the return which he was required to prepare under Rule 50?

Issue No. VI(B).—If so, what is the effect?

Issue No. VII(A).—Were no adequate arrangements made for safe custody of the ballot boxes and packets etc. after the date of polling to the date of counting and were they kept at a place which was easily accessible to the public with ample opportunity to tamper with them?

Issue No. VII(B).—Was this done in order that the ballot papers could be manipulated to the advantage of respondent No. 1?

Issue No. VII(C).—If so, what is the effect?

Issue No. VIII(A).—Were the ballot papers tampered with the connivance of respondent No. 1, his agents or supporters and were ballot papers taken out from petitioner's boxes and put into the boxes of respondent No. 1 and also fresh and unused ballot papers were introduced into the ballot boxes of respondent No. 1?

Issue No. VIII(B).—If so, what is the effect?

Issue No. IX(A).—Did the Presiding Officer at Pathar-Kachhar polling station find, after the polling, that one ballot box of respondent No. 1 was open, and did he transfer ballot papers from such box to a new box?

Issue No. IX(B).—If so, what is the effect?

Issue No. X.—Did Shri Gopal Saran Singh exercise undue influence on the Returning Officer at the time of counting of votes polled at the polling station Pathar Kachhar?

Issue No. XI(A).—At the time of counting was it discovered that about half the number of ballot boxes did not bear any symbol on the outside?

Issue No. XI(B).—Before counting were the ballot boxes of each candidate not arranged separately from those of others and was no opportunity allowed to the petitioner or his agent to examine the seals before and after the ballot boxes had been opened?

Issue No. XI(C).—Was the counting of all the candidates done simultaneously?

Issue No. XI(D).—At the time of counting was it found that two ballot boxes had no symbols outside and their paper seals indicated the name of respondent No. 1 but after being opened the symbol of Ram Rajya Parishad was found?

Issue No. XI(E).—If so, what is the effect of such irregularities?

Issue No. XII(A).—Did Government officials of all ranks of V.P. Government participate in the election by canvassing for respondent No. 1 and committing malpractices; undue influence and coercion with a view to secure defeat of K.M.P. Party and was this done with the connivance of respondent No. 1 and his supporters?

Issue No. XII(B).—If so, what is the effect?

Issue No. XIII(A).—Did the polling agent of respondent No. 1 force the voters and canvass for respondent No. 1 within the polling station Jaitwara, during the actual progress of the polling?

Issue No. XIII(B).—If so, what is the effect?

Issue No. XIV(A).—On 19th January 1952 at Nayagaon polling station, did a worker or agent of respondent No. 1 canvass for votes in favour of respondent No. 1 by showing to the voters a hand bill from Shri Raja Bahadur of Panna containing an order to the voters to vote for respondent No. 1?

Issue No. XV(A).—Did the agents or supporters of respondent No. 1 Congress posters inviting the voters to vote for respondent No. 1 on 11th January 1952 at Bairehna polling station?

Issue No. XV(B).—If so, what is the effect?

Issue No. XVI(A).—Did Shri Hakim Singh and Shri Tilakdhari Singh, Government officials, tell the voters of Kihaura and Mahtain polling stations, at the instance of respondent No. 1 and his agent, on 11th and 13th January, 1952 respectively, that if they did not vote for respondent No. 1, they would be arrested, put into jail and tortured?

Issue No. XVI(B).—If so, what is the effect?

Issue No. XVII(A).—Has the petition not been properly signed and verified?

Issue No. XVII(B).—If so, what is the effect?

Issue No. XVIII.—Was Shri Shankar Prasad necessary party to this petition and what is the effect of his non-joinder?

Issue No. XIX.—To what relief, if any, is the petitioner entitled?

FINDINGS

8. *Issue No. XVIII.*—This issue has been disposed of by our order dated 26th November 1952 whereby this plea of respondent No. 1 was rejected.

9. *Issue No. 1.*—This issue relates to the right of respondent No. 1 to stand for election. Such right has been questioned by the petitioner on two grounds, (1) that the name of respondent No. 1 was not entered in the electoral roll of Sabhapur constituency, and (2) that therefore it was necessary for him to file, along with his nomination paper, a certified copy of an entry of his name in some other electoral roll of the V.P. Assembly.

10. As remarked above, the petitioner has stated before us, with regard to the first point that "he does not know" if respondent No. 1's name exists as an elector in the electoral roll of Nagod constituency. Under Order 8, Rule 5, C.P.C. such a plea is tantamount to admission. In A.I.R. 1931, Alld. page 423 it has been held, by a Division Bench, that a plea of 'not known' is not equivalent to the plea of 'not admitted'.

11. It has, however, been proved on the record that Shri Ram Sajiwan's name did exist in the electoral roll of Nagod constituency. On this point we have the statement of Shri Ram Sajiwan as R.W. 33, supported by the statement of Returning Officer, Shri P. D. Chatterji, I.A.S. (R.W. 39), Shri Chatterji has stated, on solemn affirmation, that he satisfied himself about the existence of respondent No. 1's name as an elector in the electoral roll of Nagod constituency. The Gazette Notification of the V.P. Government dated 1st December 1951 shows that the Returning Officer for Nagod and Sabhapur constituencies were the same i.e. Deputy Commissioner, Satna. Hence the electoral rolls of Nagod constituency must also have been on the table of Shri Chatterji on the date of scrutiny, and he could easily see from that electoral roll whether respondent No. 1's name existed there or not. There is no reason to disbelieve his statement that he did verify from such electoral roll about the existence of respondent No. 1's name in the electoral roll of Nagod constituency.

12. We find, therefore, that there is satisfactory evidence to prove that respondent No. 1's name as an elector existed in the electoral roll of Nagod constituency. This being so, under section 7(c) (ii) of the Government of Part C States Act, 1951, he is qualified to be chosen to fill a seat in the Legislative Assembly of Vindhya Pradesh.

13. The second objection in this connection is that under Section 33, sub-section 6 of the R.P. Act, 1951 it was incumbent upon respondent No. 1 to file a copy of the electoral roll in which his name exists, when presenting his nomination paper.

14. On this point the evidence adduced by the petitioner relates to the time of scrutiny and not to the time of presentation of the nomination paper, Shri Narbada Prasad (P.W. 8), Shri Gajadhar Prasad (P.W. 9), Shri Sukhdeo (P.W. 10), Shri Ram Adhar (P.W. 11), Shri Ram Kumar Tripathi (P.W. 16), Shri Sitaram Nepali (P.W. 18) and the petitioner himself, as P.W. 71, all depose about the time of scrutiny. On the other hand the Returning Officer Shri P. D. Chatterji, I.A.S., has clearly stated that, when the nomination paper of Shri Ram Sajiwan was presented before him, a certified copy of an entry of respondent No. 1's name in the electoral roll of Nagod constituency was produced and he satisfied himself by referring to the electoral rolls of Nagod constituency, which were before him, that respondent No. 1's name existed therein. That certified copy is not on the record, and Shri Chatterji cannot account for this fact. It appears however that such a copy was shown to him and then taken back by respondent No. 1. Moreover, we are not prepared to accede to the contention of the learned counsel for petitioner to the effect that, even if the Returning Officer is satisfied that a candidate is entered as an elector in one of the constituencies of the State, he must call for the production of a certified copy of the entry of such electoral roll, and the non-production of such entry would necessarily result in rejection of such nomination paper. Sub-section 6 of section 33, R.P. Act, 1951, provides for production of such certified copy "for the purpose of sub-section 5", hence if the purpose of sub-section 5 is otherwise served i.e. by direct reference to the electoral roll, there seems to be no valid reason for resorting to sub-section 6. In a case decided by the Gorakhpur Election Tribunal, by their judgment published at page 78 of the *Gazette of India (Extraordinary)*, dated the 12th January 1953, the facts were that the petitioner, whose nomination paper was rejected, had filed, along with his nomination paper, extracts of entries from the relevant electoral rolls. The Returning Officer refused to look into such electoral rolls and rejected the nomination paper holding that the copies filed were not "duly certified". The Election Tribunal held such rejection to be improper. We, therefore, find that respondent No. 1 was entitled to stand for election from the Sabhapur constituency.

15. *Issue No. II(A).*—In addition to the oral evidence of a general nature produced by the petitioner regarding the defective nature of ballot boxes, demonstrations were conducted in our presence by two persons, namely Shri Balmik Singh (P.W. 69) Agricultural Assistant in the Community Project, Sohawal, and Shri Jai Singh (P.W. 69) who was then a student of the second year Class, Shri Balmik Singh (P.W. 63) sealed a ballot box and then he opened it but after causing some damage to the paper seal, but Shri Jai Singh (P.W. 69), after pasting the paper seal with a play of 3/5" between the two folds, and after putting the lac seal on the thread at a corner of the lid of the box, was able to open the ballot box without damaging the paper seal but without breaking the lac seal on the thread. Our view, therefore, is that, as held by us in another case No. 3/141, if the paper seal is pasted slightly loosely and if the lac seal on the thread is put at a sufficient distance from the knob, then the ballot box can be opened without breaking the paper seal. In other words, under certain circumstances, a ballot box of the design used in this election could be opened by use of skill, dexterity or force although there may not be any mechanical defect in the construction of such box.

Issue No. II(B).—The plea is based on Rule 21, sub-rule 5 of the Representation of People (Conduct of Elections & Election Petitions) Rules, 1951, which provides for locking and sealing of ballot boxes before commencement of the poll. Curiously enough the evidence produced by the petitioner relates to the sealing after the close of the poll. This is clear from the statement of several witnesses on this point. For example, P.W. 7, P.W. 16, and P.W. 32 etc. all of whom refer to the sealing after the close of the poll. Hence we find that there is no evidence in support of this issue, which therefore, stands unproved.

Issue No. II(C).—The effect of the defective nature of ballot boxes can be judged by reference to the other evidence and findings regarding the alleged contraventions of the R.P. Act and Rules framed thereunder, which are covered

by other issues. Our opinion therefore regarding the effect of the defective nature of the ballot boxes will be based on proof of other facts in the case.

16. *Issues Nos. III & IV.*—The evidence on both these issues is common and therefore both these two issues will be taken up together. The allegations which form the basis of these two issues, are that the Presiding Officers refused to make separate packets of papers etc., and to seal them, soon after the close of the poll, and also failed to prepare accounts of ballot papers in form No. 10. In other words, it is alleged that Rules 32 and 33 were contravened.

17. The evidence produced by the petitioner regarding these matters is inconsistent. We proceed to examine the statements of the relevant witnesses briefly:—

(1) P.W. 7 to *Shri Sadhuram Dubey*, who was a polling agent of the petitioner at Lakhanwah and Sabhapur polling stations and also his counting agent at Sohawal. He states that, after the close of the poll, he and other polling agents requested the Presiding Officer to make packets of un-used ballot papers and marked electoral rolls and allow them to fix their seals, but the Presiding Officer said that it was his job and asked them to go away. He also states that the Presiding Officer did not fill up form No. 10 in his presence. He admits that he presented no written application or complaint to the Presiding Officer or to any higher officer regarding this matter.

(2) P.W. 16 *Dr. Ramkumar Tripathi* was a candidate of the Ram Raj Parishad Party. With reference to this matter said about three polling stations namely, Khohi, Jaitwara and Karigohi that the Presiding Officer "promised to do what was necessary". In other words, the Presiding Officer's reply was that he would make the required packets and returns and seal them, as required by the law. This witness also made no written complaint about the Presiding Officer's refusal to make such packets in his presence.

(3) P.W. 32 *Shri Baijnath* was a polling agent of the petitioner at Pindra polling station. He states that he alone requested the Presiding Officer to make the packets and allow him to seal them and that the other agents did not speak to the Presiding Officer at all.

(4) P.W. 33 *Shri Deo Datt* was petitioner's polling agent at Chaubeypur. He states that he and other agents requested the Presiding Officer to make the sealed packets etc. and waited for 10 or 15 minutes only, after the close of poll.

(5) P.W. 34 *Shri Anant Deo* was petitioner's polling agent at Chandraura polling station. He states that the Presiding Officer refused to make the sealed packets in his presence, and asked him to go away, but the Presiding Officer and some clerks remained sitting.

(6) P.W. 40 *Shri Ramayan Prasad* was petitioner's polling agent at Nayagon. He states that the Presiding Officer told him that he had nothing to do with the matter of making and sealing of packets, and so he left, but he admits that the Presiding Officer was writing something at that time.

18. It appears from the statements of the foregoing witnesses, that soon after the polling was closed, they wanted the Presiding Officers to prepare the packets and accounts and seal them at once, although the Presiding Officer was busy preparing the accounts etc. These polling agents of the petitioner did not have the patience to wait sufficiently long and so they went away. Thus the evidence does now show that no packets or returns were prepared by the Presiding Officers. In fact it appears from the statement of *Shri P. D. Chatterji, I.A.S.*, Returning Officer that such papers and returns duly reached him and he compared the figures at the time of counting.

19. Other witness on this point are *Shri Gore Lal (P.W. 41)*, *Shri Bhagwat Prasad (P.W. 43)*, *Shri Bhaiya Lal Misra (P.W. 44)*, *Shri Tirath Prasad (P.W. 45)*, *Shri Ramdeo (P.W. 47)*, and the Petitioner himself (P.W. 71). Their statements are to the same effect as those mentioned above. In rebuttal, we have the statements of *Shri Dinesh Chandra Misraulia (R.W. 15)*, who was Presiding Officer at Jawarin, Pathar Kachhar, Khohi and Baraundha polling stations. states that he prepared the required packets and returns after the poll was closed at and at that time some of the agents were present and were allowed to see them. We may also refer to the statements of the Returning Officer (R.W. 39) by way of Rebuttal.

20. We find that the contraventions covered by these issues have not been proved by satisfactory evidence. What appears to have happened is that the sealing of ballot boxes followed by the preparation of Returns and packets naturally took some time, and as the polling agents were in a hurry to go away as soon as possible, the result was that they were not all present when the work was complete and the ballot boxes and packets were made over to the police guard. In fact none of the witness of the petitioner seems to have been present

at that time. So it cannot be found that the Presiding Officers failed to prepare the sealed packets for unused and cancelled ballot papers, the marked electoral rolls etc. or Form No. 10. The result is that we find that these issues have not been satisfactorily proved.

21. *Issue No. V.*—This is based on the allegations made in para. 6(e) of the petition, which are to the effect that, inspite of the petitioner's and his agents demand, the Returning Officer did not verify the accounts submitted by the Presiding Officer under Rule 33 by comparing them with the statements prepared under Rule 46 etc., as provided in Rule 49.

22. Rule 49 provides that a Returning Officer shall verify the accounts, submitted by Presiding Officers under Rule 33, by comparing them with the statements prepared under Rule 46, with the number of valid and rejected ballot papers, as well as unused ballot papers and the tendered votes list. He shall then re-close re-seal these packets. On this point the petitioner's witnesses are P.Ws. 7, 16, 18 and 71.

P.W. 7 was the polling agent of the petitioner. He states that the Returning Officer did not verify any returns, nor did he prepare any statements in his essence.

P.W. 16 Dr. Ramkumar Tripathi—a candidate. He states that the Returning Officer did not verify any accounts.

P.W. 18 Shri Sitaram Nepali, was another candidate. He deposes similarly.

The last witness is P.W. 71 who is petitioner himself.

23. The respondents evidence consists of the statements of R.W. 15, Shri Dinesh Chandra Misraulia who was Presiding Officer at certain polling stations. He speaks about the regular submission of accounts by him as required by law.

24. The statement of Shri P. D. Chatterji, I.A.S. (R.W. 39) shows that, at the time of counting, he compared the figures in form No. 10 with the papers in ballot boxes and then he prepared the form No. 16 but that the form No. 10 of the polling party, for one day's polling, was missing, and this was noted on Ex. R.W. 39/1, and hence he was unable to complete the verification as required by law.

25. We have examined the file of form No. 10 (R.W. 2/4) and noticed that the only missing form No. 10 is that of Kilhaura polling station for one day. We also notice that the file of form No. 14 (Ex. R.W. 2/5) shows that the ballot papers found in the ballot boxes of Kilhaura polling station in case of different candidates were as follows:—

<i>Name of candidate</i>	<i>Votes polled at Kilhaura</i>
1. Shri Sitaram Nepali	40
2. Shri Ramsajiwan	86
3. Shri Ram Hridey	24
4. Shri Risal Singh	23
5. Shri Ramkumar Tripathi	9
Total	182

26. We, therefore, find that, in case of these 182 votes polled at Kilhaura on one day, verification could not be done according to Rule 49, because such form No. 10 was found missing.

27. *Issue No. V(B).*—No adverse inference can be necessarily drawn from the fact that form No. 10 of Kilhaura was missing, because it might have been misplaced or lost. In any case the utmost that can be said about the result of this want of verification in case of Kilhaura polling station is that the number of unused ballot papers out of those made over to the Presiding Officer of that polling station could not be checked in the absence of form No. 10, but since actual tampering with the ballot boxes has not been proved by direct or circumstantial evidence, it cannot be said that some out of those unused ballot papers were subsequently introduced into any of the ballot boxes of any particular candidate. In this view of the matter the absence of form No. 10 of Kilhaura polling station loses its importance. As such the same does not materially affect the result of this election.

28. We find from the form No. 16 (Ex. R.W. 39/1) that the votes polled by different candidates were as follows:—

<i>Name of candidates</i>	<i>Votes polled</i>
1. Shri Sitaram Nepali	695
2. Shri Ramsajiwan	3,106
3. Shri Ram Hridey	830
4. Shri Risal Singh	1,198
5. Shri Ramkumar Tripathi	1,237

From the above figures it would be clear that the elimination of 182 votes of Kilhaura can have no material effect on the result of the election.

29. We find, therefore, that the want of verification in the case of Kilhaura could have no material effect on the result of the election.

30. *Issue No. VI(A).*—This is based on the allegation that the Returning Office refused to allow the petitioner or his agent to take a copy of extract of the return which he was required to prepare under Rule 50. In support of this allegation we have been referred to the statement of the petitioner's polling agent, Shri Sadhoram Dube (P.W. 17), as well as to the statements of the two of the candidates *viz.*, Dr. Ramkumar Tripathi (P.W. 16) and Shri Sitaram Nepali (P.W. 18), and to the evidence of the petitioner himself as P.W. 71. We find that none of the petitioner's witnesses named above supports him on this point.

31. On the other hand, Shri P. D. Chatterji, I.A.S., Returning Officer, has appeared as R.W. 39 and stated that he never refused to give a copy of the accounts prepared by him.

32. We, therefore, find that the evidence of the petitioner is totally insufficient to prove this issue.

33. *Issue No. VI(B).*—This does not arise in view of our finding on issue No. VI(A) above.

34. *Issue No. VII(A).*—In support of this issue reliance has been placed on the statements of three witnesses, *viz.*, P.Ws. 12, 13 and 31.

P.W. 12 is Shri Badri Prasad who was a voter at Karighoi polling station. He states that 2 or 3 days after the polling, he went to Sabhapur police station in order to lodge a report regarding the loss of his buffalo, and there he noticed that certain ballot boxes were lying in the enclosed court yard of the police station. He states further that Shri Ramsajiwan with 2 or 3 constables and few other persons wearing Gandhi caps, were present within that enclosure. He admits, however, that no report by him was recorded in the police station. The incident is alleged to have taken place at 10 A.M., which is a very unlikely time for respondent No. 1 to go and try to tamper with ballot boxes especially in the presence of so many persons.

P.W. 13, Shri Sital Prasad. He states that ballot boxes were lying in the verandah of the Thana, and that no one could go therein. He adds further that nobody touched the boxes or did anything. This witness contradicts petitioner's allegation on this point as well as the statement of P.W. 12.

The other witness is Sheobalak, P.W. 31. He saw some ballot boxes lying in the verandah of Thana Majhawan and noticed some people wearing Khaddar and Gandhi caps loitering there. He admits he cannot say definitely to which polling station the ballot boxes belonged, nor whether they were ballot boxes at all. His statement is vague and indefinite.

35. We find that the allegations covered by this issue have not been proved by any credible evidence.

36. *Issue Nos. VII(B) and (C).*—These issues do not arise in view of our finding above.

37. *Issue No. VIII(A).*—This issue covers an important allegation made by the petitioner that ballot boxes were tampered with and ballot papers were taken out from petitioner's boxes and put into the boxes of respondent No. 1, and also that unused ballot papers were put into the ballot boxes of respondent No. 1. All this, he said, was done with the connivance of respondent No. 1 or his agents or supporters. There is admittedly no direct evidence relating to this issue. The learned

counsel for the petitioner asks us to infer these facts from other circumstances. So far the only contravention of the rules that has been proved relates to the absence of form No. 10 of Kilhaura polling station. This fact alone, as may be seen, cannot reasonably lead us to the conclusion of tampering.

38. We are unable to find that the circumstances which may be said to be proved on the record are sufficient to establish this issue.

39. *Issue No. VIII(B).*—In view of the finding on issue No. VIII(A) above this issue does not arise.

40. *Issue No. IX.*—We have been referred to the statements of three witnesses of the petitioner in support of this issue viz., P.W. 16, P.W. 42 and P.W. 44.

P.W. 16 is candidate Dr. Ramkumar Tripathi. He states nothing with regard to this allegation.

P.W. 42 is Bhagwandin, petitioner's polling agent at Pathar-Kachhar. He states that after the polling was finished, one ballot box bearing the symbol of bullocks was found open. As soon as this was discovered the Presiding Officer took the ballot papers out of the box and put them into another box of the same type.

His witness made no written complaint about this matter, nor did any one else. The only other witness who deposes on this point is another polling agent of the petitioner namely Shri Bhaiya Lal Misra (P.W. 44). We find that the evidence regarding this is wholly interested and even if it be taken to be correct, it does not prove any suspicious act done by the Presiding Officer. If he found the ballot box actually left open and transferred the contents to another box in presence of everyone, we fail to see how this has affected the result of the election. The Presiding Officer has appeared as R.W. 15 and stated that there was no verbal or written complaint made to him about anything done on that occasion.

41. We find, therefore, that this issue has not been satisfactorily proved.

42. *Issue No. X.*—This issue relates to the exercise of undue influence on the Returning Officer at the time of counting, by Shri Gopal Saran Singh, who was then the President of the District Congress Committee and is now a Minister in the State of Vindhya Pradesh. It is alleged in para. 6(j) of the petition that Shri Gopal Saran Singh's presence at the time of counting was illegal and the effect of his presence was to exert undue influence on the Returning Officer. It has been argued before us that Shri Gopal Saran Singh's presence was unauthorised and at his instance the Returning Officer overruled the objections raised by the petitioner or his agent. So far as Shri Gopal Saran Singh's presence is concerned, it is stated by Shri P. D. Chatterji, Returning Officer, R.W. 39, that Shri Gopal Saran Singh was "probably" the counting agent of respondent No. 1, but that he never used any undue influence in order to further the cause of respondent No. 1. Shri Gopal Saran Singh himself has stated on commission that he was the counting agent of respondent No. 1. But we notice that no counting agency form of Shri Gopal Saran Singh is attached to the file, and so we cannot find that Shri Gopal Saran Singh is proved to have been the counting agent of respondent No. 1. We also find that there is no evidence worth the name to show that Shri Gopal Saran Singh exercised any undue influence on the Returning Officer in favour of respondent No. 1.

43. In absence of the agency form relating to the appointment of Shri Gopal Saran Singh as respondent's counting agent, his presence in the counting hall may be held to be contrary to the rules on the subject, but there is nothing to show that such presence had any adverse effect on the proceedings taken at the time of counting. We find, therefore, this issue as framed, has not been proved by the petitioner.

44. *Issue No. XI.*—This issue covers a number of alleged irregularities committed at the time of counting. It is alleged that about half the number of ballot boxes had no outer symbols, the ballot boxes of each candidate were not arranged separately, and that the counting was done simultaneously. Moreover, it is alleged that two of the ballot boxes had no outer symbols and the number on the paper seal was that of respondent No. 1, but the inner symbol was that of Ram Rajya Parishad. We have been referred to the evidence of 4 witnesses, including the petitioner himself, in support of this issue. These are the same witnesses on whom reliance is placed in order to prove most of the other issues, and they are P.W. 7 (polling agent of the petitioner), P.W. 16 and P.W. 18 (two of the rival candidates), and P.W. 71 (petitioner himself).

45. Respondent has produced some evidence in rebuttal, including the statement of Shri P. D. Chatterji, Returning Officer, who has stated that the ballot boxes were arranged candidatewise and the candidates or their agents were

allowed to inspect them, and that he does not remember coming across any box whose outer symbol was different from the inner one.

46. We notice that the petitioner has not produced any disinterested witness to support this allegation clearly and definitely and we are unable to hold that these irregularities have been proved.

47. *Issue No. XII.*—This issue relates to alleged acts of Government officials to further the interest of respondent No. 1, with his connivance. A large number of witnesses has been cited and produced to show that the Polling Officers on duty openly canvassed in favour of respondent No. 1. For instance, Shri Badri Prasad (P.W. 12) states that a police officer at polling station Karigohi as well as Polling Officers who gave the voters the ballot papers, asked them to vote for the Congress candidates.

P.W. 14 (*Brijbasi*) deposes about canvassing by a police constable at Chitehra polling station, although he did not mention about it to petitioner.

P.W. 17 (*Shri Ram Sumer Bajpai*) speaks about 4 police constables canvassing among lady voters about 25 yards away from the polling station.

Shri Sitaram Nepali (rival candidate) is P.W. 18. He mentions about canvassing by Shri Hakim Singh and Tilakdhari Singh, Polling Officers at Kilhau and Mahtain polling stations. He adds that they threatened the voters with corporal punishment unless they voted for the Congress candidate.

Shri Bhairon Singh (P.W. 19). Deposes similarly.

Lachhman Kachhi (P.W. 20) speaks about canvassing by Thakur, Patwari of Village Deora, and by the Polling Officer at polling station Chitehra.

Mahabir Prasad (P.W. 21) speaks about a constable canvassing at Nakalla polling station.

Durjan (P.W. 23) speaks about Chitehra polling station and mentions canvassing by a police officer. He also mentions canvassing by the patwari of Halka Deora.

Shri Ganga Prasad (P.W. 25) was a worker of the petitioner. He states that on the evening before the date of polling, Tilakdhari Singh, Hakim Singh and Phalgu Prasad canvassed for the Congress candidate.

There are other witnesses also who speak about canvassing by Government officials. A large number of Government officials who took part in the polling, have appeared as respondent's witnesses and have flatly denied that there was any canvassing done by them or by any Government official in favour of respondent No. 1. For example, see the statement of Shri Deo Saran Garg (R.W. 2), who is Sub-Deputy Inspector of Education Department, Satna; Bhodeshwar Singh (R.W. 2), Teacher, Hindi Middle School, Jaitwara, Bhuwan Prasad (R.W. 4), Teacher, A.V.M. School, Ramnagar, Moti Mani Singh (R.W. 6), Teacher, Hindi Middle School, Jaitwara, Ramgopal Misra (R.W. 7), and Rangpati Singh (R.W. 8), Teachers, A.V.M. School, Jaitwara, Tilakdhari Singh (R.W. 9), Teacher, Primary School, Mahtain, Ramkaran Singh (R.W. 10), Teacher, Hindi Middle School, Bairehna, Mahabir Prasad (R.W. 12), Teacher, Hindi Middle School, Sanda, Bhैया Lal (R.W. 13), Teacher, Upper-Primary School, Naugawan, Dinesh Chandra Misraulia (R.W. 15), Headmaster, Rajendra Junior High School, Jaitwara, Sarju Prasad (R.W. 16), Teacher, A.V.M. School, Jaitwara, Jagdish Pd. (R.W. 17), Teacher, Training School, Chhatarpur, Phalgu Prasad (R.W. 18), polling agent of respondent No. 1, Ramkripal Singh (R.W. 20), Teacher, Satna Primary School; Ram Saroop Singh (R.W. 21), Hindi Primary School, Pataura, Ram Pratap (R.W. 22), Teacher, Hindi Middle School, Bhatanwara, Ram Behari (R.W. 24), Teacher, Middle School, Nakaila, T. B. Srivastava (R.W. 26), Assistant Headmaster, S. High School, Nagod, Abhinash Pratap Singh (R.W. 27), Teacher, Lower Middle School, Khairwa; Madho Prasad Tripathi (R.W. 28), Teacher, R.T. College, Rewa, Bhैया Lal (R.W. 29), and Ram Prakash (R.W. 30), Teachers, Hindi Middle School, Bairehna, Virendra Singh (R.W. 31), Teacher, Primary School, Pratappur, Abdurramhan (R.W. 33), Teacher, Birsinghpur, etc. All these Government officials have deposed on S.A. that no officials canvassed for the Congress or for any candidate. In any case, there is not an iota of evidence to show that canvassing, if any, done by any Government official, was done with the connivance of respondent No. 1 or his agent or supporters, and such connivance cannot be presumed.

48. It is true that the Government servants referred to above may be said to be on their own defence and their veracity may not be quite unimpeachable. But it is equally true that the evidence of the petitioner's witnesses is tendentious and unconvincing. The matter has not been placed beyond the range of suspicion. In the circumstances we find that this issue has not been proved.

49. *Issue No. XIII.*—It is alleged that the polling agent of respondent No. 1 at Jaitwara namely Mosu, *alias* Mukhtar Ahmad, accompanied the voters to the seat of the Presiding Officer and asked them to vote for the Congress. Such open canvassing is most unlikely. Moreover, there was no complaint about it.

Shri Ramkumar (P.W. 16) states that he was present at Jaitwara. He gives a different version, *viz.* that Mosu had a badge having the picture of bullocks, on his coat and some pamphlets in his pocket having the emblem of bullocks. This man showed this badge and the pamphlets to the voters as they came in and asked them to vote for the Congress candidate.

Shri Ramsomer Bajpai (R.W. 17) speaking about the Jaitwara polling station, states about a different incident, namely canvassing on behalf of the Congress within the enclosure at a place which was 35 yards from the polling station.

Shri Ramanuj (R.W. 30) states that Mosu was canvassing within the enclosure of the polling booth.

Shri Ganga Prasad (R.W. 1), Presiding Officer at Jaitwara and other polling stations, states that he received a complaint (R.W. 2/8) and after enquiry submitted his report (R.W. 2/8-a). We find in this report that the allegation regarding Mosu's conduct was not substantiated before the Presiding Officer, who reported accordingly. It was possibly due to the attempt of one party to injure other party.

Bhuwan Prasad (R.W. 4), Teacher in the A.V.M. School, Ramnagar, had denied any canvassing at Jaitwara.

50. We find that this allegation of the petitioner has not been proved satisfactorily.

51. *Issue No. XIV.*—It is alleged in para. 2 of the list of particulars that at Nayagaon polling station, on 19th January 1952, the workers and agent of respondent No. 1 were canvassing for respondent No. 1, by showing a letter from the Rajabhadur of Panna, which letter was an order to the voters to vote for respondent No. 1.

Dr. Ramkumar (R.W. 16) states that at Nayagaon polling station he noticed a Chamar distributing some pamphlets which were like Ex. P.W. 8/1. He made a verbal complaint to the Presiding Officer who arrested that Chamar but respondent No. 1 stood surety for him and got him released.

Sitaram Nepali (P.W. 18) deposes similarly.

On this point we have also the statements of *Shri Ramayan Prasad* (R.W. 40), *Shri Kishun* (P.W. 50), and petitioner himself as P.W. 71.

Shri Bhuwan Prasad (R.W. 4) was the Assistant Presiding Officer at Nayagaon. He states that one Chamar was found to have some papers containing election propaganda in his pocket. This man was removed by a police constable.

52. There is no satisfactory evidence regarding distribution of pamphlets like Ex. P.W. 8/1. Mere possession does not amount to the proof of distribution. Moreover, the contents of this pamphlet show that it was an appeal of *Shri Narendra Singh* to the voters to vote for the Congress. There was no order as alleged by the petitioner. The signatory to this leaflet admitted therein that he himself was a Congress candidate and would naturally expect support for his party.

53. We find that the issue has not been proved by any credible evidence.

54. *Issue No. XV.*—It is alleged that some agent of respondent No. 1 put up a Congress poster at Bairehna polling station on 11th January 1952. P.W. 47 is the first witness regarding this. He is Ramdeo, polling agent of the petitioner. He states that this paper was put up on a mango tree, about 40 paces from the boundary of the polling booth, and on his complaint it was removed under orders of the Presiding Officer. *Shri Chandra Shekher* (P.W. 51) and *Shri Moti Lal* (P.W. 52) deposed to the same effect. *Shri Madho Prasad* (R.W. 28) was the Presiding Officer at Bairehna. He states that a poster was pasted on a tree about 100 or 150 yards away from the enclosure and it was removed under the orders by a police constable.

55. The allegation of the petitioner that a poster canvassing for the Congress was put up at Bairehna polling station as given in para. 3 of the list of particulars has not been proved by satisfactory evidence, and we are not prepared to hold that such poster was put up within the polling booth.

56. *Issue No. XVI.*—This allegation has already been dealt with while discussing issue No. XII. We have found that there is no credible or satisfactory evidence to prove this allegation. This issue, therefore, stands unproved. Moreover, there is no evidence at all to indicate that such canvassing was done at the

instance of or with the connivance of respondent No. 1. Hence his responsibility cannot be fixed in any way.

57. *Issue No. XVII.*—In a number of cases pending before us, the question of improper verification was decided by our order dated 15th January 1953. We found by that order that if the verification clause is in substantial compliance with the provisions of law, errors and technicalities may be condoned or amended. But if the verification is farcical, it is no verification in the eye of law.

58. In the present case we find that certain paras. are verified as based on the personal knowledge of the petitioner, some paras. as based partly on his personal knowledge and partly on information received which he believes to be true, and certain other paras. are based on his personal knowledge and belief. We consider that this verification is in substantial compliance with the requirements of law and is correct. Moreover, this point has not been pressed before us at the time of argument.

59. *Issue No. XVIII.*—This issue has been disposed of by our order dated 26th November 1952.

60. *Issue No. XIX.*—The petitioner has failed to prove any such contravention of law or corrupt practices as might have materially affected the election. The result is that this petition must fail. We accordingly order that this petition be dismissed with costs, which we assess at Rs. 200 (Rupees two hundred). cost will be recoverable by respondent No. 1 from the petitioner.

61. In this case Shri R. N. Basu, Shri Manmohan Lal, Srivastava and Shri N. N. Mukarji, Advocates, and Shri Keshau Prasad, Pleader appeared for the petitioner, and Shri Harish Kumar Srivastava and Shri G. P. Misra, Pleaders appeared for respondent No. 1.

Announced.

E. A. N. MUKARJI, *Chairman.*

G. L. SRIVASTAVA, *Member.*

U. S. PRASAD, *Member.*

The 27th July 1953.

[No. 19/260/52-Elec.III/1078.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.